IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
TUESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE G. BIKSHAPATHY
and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 1734 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15-04-2002 in WP NO : 22501 OF 2001 on the file of the High Court of Andhra Pradesh at Hyderabad.)

Between:

C.V.SWAMY,S/o C.Govindu
R/o Sri Ramulpet, Moragudi Post,
Jammalamadugu,
CUDDAPAH DISTRICT

..... APPELLANT

AND

1.The APSRTC rep. By its
Chairman and Managing Director,
Musheerabad,
Hyderabad.

2. The APSRTC rep. By its
Regional Manager,
Cudapah Region,
Cuddapah

3. The APSRTC rep by its
Depot Manager, Jammalamadugu Depot,
Jammalamadugu,
CUDDAPAH DISTRICT

.....RESPONDENTS

For the Appellant: MS.B.MALLESWARI

For the Respondent No.: MR.P.VINAYAKA SWAMY

The Court Made the following order:

ORDER: (Per Justice G.Bikshapathy)

1. The appellant herein was working as Conductor in Andhra Pradesh State Road Transport Corporation (for short APSRTC) under the control of Depot Manager, Jammalamadugu. While so, on 17-9-1999 when he was working on route Kondasunkesula to Jammalamadugu, the bus was checked by the checking officials and found that the appellant having collected Rs.5/- from a couple failed to issue the tickets and then committed certain cash and ticket irregularities.

2. The appellant was suspended from service and an enquiry was conducted and ultimately he was removed from service by R3 herein by proceedings dated 27-1-2000. Against the said order of removal from service, the appellant filed an appeal and the same was rejected on 26-2-2000. Again the appellant filed a review petition on 19-4-2000, which was considered by R2 i.e. Regional Manager, APSRTC, Cuddapah Region who passed an order on 4.5.2000 directing appointment of the appellant afresh as conductor. Against the said order, the appellant filed writ petition before this court in W.P.No.22501 of 2001. The learned single Judge by an order dated 15-4-2002 refused to interfere with the order of R2 and thus dismissed the writ petition. Against the said order the appellant has filed the present writ appeal.

3. Learned counsel for the appellant submits that the order of the learned single Judge is erroneous and contrary to law. She submits that the judgment runs contrary to the decision reported in SHAIK QURSHEED v. MANAGING DIRECTOR, APSRTC, HYDERABAD

AND OTHERS[1]. She would submit that the reviewing authority having found that the punishment is excessive ought to have directed reinstatement with continuity of service. But in the instant case granting a fresh appointment is illegal and contrary to the Regulations and therefore the learned counsel would submit that the order is liable to be set aside.

4. Learned Standing Counsel for respondent-APSRTC submits that since the charges framed against the appellant were proved the order of punishment was awarded by the R3 which was confirmed by the appellate authority. However, taking lenient view of the matter the reviewing authority interfered with the order and granted fresh appointment in order to give a chance to the appellant to serve the Corporation with utmost dedication in future, and hence the order passed by the learned single Judge cannot be said to be irregular or illegal.

5. Heard learned counsel for both the parties.

6. It is not in dispute that the appellant was removed from service for cash and ticket irregularities and the appeal was also dismissed. But, however, under a review petition filed by the appellant R2 considered the matter and he has categorically held that the punishment of removal from service was too excessive and intended to give one more chance to the appellant. In such an event the question arises for consideration as to whether he should be reinstated or whether he should be granted fresh

appointment. In a similar identical situation a Division Bench of this Court in SHAIK QURSHEED v. MANAGING DIRECTOR, APSRTC, HYDERABAD AND OTHERS[2] remitted the matter to the appellate authority to consider afresh whether the alteration of punishment would

be treated as a fresh appointment which would give no benefit of either of the continuity of service or of terminal benefits to the appellant under the circumstances of the case. However, the Division Bench in the said case was dealing with an employee who was driver and who had put in 18 years of service and he was unauthorisedly absent from duty for a month. Keeping in view the judgment of the Division Bench referred to above, we are of the considered view that the matter requires re-consideration in the hands of R2 i.e. Regional Manager, APSRTC, Cuddapah Region to consider whether the appellant is entitled for the continuity of service. However, we make it clear that the appellant is not entitled for any back wages.

7. Under the above circumstances, the Writ Appeal is allowed and the order of the learned Single Judge is set aside and the matter is remitted back to R-2 i.e. Regional Manager, APSRTC, Cuddapah Region for considering as to whether the appellant is entitled for continuity of service and other benefits except the back wages. He shall decide the same after giving due opportunity to the appellant. This exercise shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

Tnb
Dated: 15-06-2004 (G.Bikshapathy, J)

(B.Seshasayana Reddy,J)

.....REGISTRAR

To

1.The APSRTC rep. By its
Chairman and Managing Director,
Musheerabad,
Hyderabad.

2. The APSRTC rep. By its

Regional Manager,
Cudapah Region,
Cuddapah

3. The APSRTC rep by its
Depot Manager, Jammalamadugu Depot,
Jammalamadugu,
CUDDAPAH DISTRICT

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[1] 1997(3) ALD 834 (D.B)

[2] 1997(3) ALD 834 (D.B)